

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

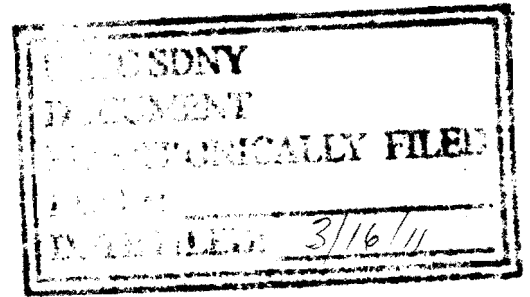
JOHN JACKSON, JR.,

Petitioner,

v.

W. PHILLIPS, Acting Superintendent, Green Haven
Correctional Facility, and THE ATTORNEY
GENERAL OF THE STATE OF NEW YORK

Respondent.



03 Civ. 2739 (RO)

ORDER

OWEN, District Judge:

Pro se Petitioner seeks a writ of habeas corpus under 28 U.S.C. § 2254, challenging his conviction for murder in the second degree, N.Y. Penal Law § 124.25, and criminal possession of a weapon in the second degree, N.Y. Penal Law § 265.03.

On July 13, 2004, Magistrate Judge Mark D. Fox filed a Report and Recommendation (the "Report") in which he recommended that the petition be dismissed. (Docket Entry No. 14). On September 7, 2005, Judge Stephen C. Robinson issued an order allowing Petitioner to file a final, amended petition for a writ of habeas corpus by November 30, 2005. (Docket Entry No. 16). On March 15, 2007, Petitioner filed an amended petition for habeas corpus. (Docket Entry No. 18). On August 20, 2007, Judge Fox issued a Memorandum Order, in which he explained his findings that both the amended petition, and a supplemental petition filed by Petitioner, fail to raise any grounds that can support the granting of habeas relief. (Docket Entry No. 20.)

Respondent filed a supplemental affidavit and memorandum of law in opposition to the petition, (Docket Entry Nos. 21-22), and Petitioner filed an affidavit in reply. (Docket Entry No. 24.)

On July 30, 2008, Judge Fox issued an Amended Report and Recommendation (the “Amended Report”) (Docket Entry No. 26.) In the Amended Report, Judge Fox renews his recommendation of his initial Report that the petition be dismissed.

Petitioner requested an extension of time to file objections to the Amended Report, which was granted by Judge Robinson. (Docket Entry No. 27.) Petitioner filed his objections to Judge Fox’s Amended Report on October 8, 2008. (Docket Entry No. 28.) On August 26, 2010, this case was transferred to this Court. (Docket Entry No. 29.)

United States Magistrate Judges hear dispositive motions and make proposed findings of fact and recommendations, generally in the form of a Report and Recommendation. District courts review those orders under a clearly erroneous or contrary to law standard of review. 28 U.S.C. § 636(b)(1)(A). In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where no timely objection has been made by either party, a district court need only find that “there is no clear error on the face of the record” in order to accept the Report and Recommendation. *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). In the event that a party files objections to the magistrate judge’s recommendations, district courts conduct a *de novo* review of those matters to which a party filed an objection. *Id.* § 636(b)(1)(B), (C). *First Union Mortgage Corp., v. Smith*, 229 F.3d 992, 995 (10th Cir. 2000).

A party may file “specific written objections,” Fed R. Civ. P. 72(b), to a Magistrate Judge’s proposed findings and recommendations, and in that case, the district court has an

obligation to make a *de novo* determination as to those portions of the Report and Recommendation to which objections were made. 28 U.S.C. § 636(b)(1). A district court judge, in making a *de novo* determination, is afforded discretion in the weight placed on proposed findings and recommendations. *See United States v. Raddatz*, 447 U.S. 667, 676 (1980). In its sound discretion, a district court may afford a degree of deference to the Report and Recommendation. Objections to a Report and Recommendation are to be “specific and are to address only those portions of the proposed findings to which the party objects.” *Camardo v. General Motors Hourly-Rate Employees Pension Plan*, 806 F. Supp. 380, 381-82 (W.D.N.Y. 1992). In the event a party’s objections are conclusory or general, or simply reiterate original arguments, the district court reviews the Report and Recommendation for clear error.


This standard of review must be applied while remaining cognizant of the court’s obligation to construe a pro se litigant’s submissions liberally in the light that they raise the strongest possible arguments that they suggest. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006)(citations omitted).

Petitioner’s objections, filed October 8, 2008, generally restate the arguments in the Petition and in later filings, and do not address Judge Fox’s Report and Recommendation with any specificity. The Court has nevertheless conducted a *de novo* review. After a careful review of Petitioner’s objections in light of the record and Judge Fox’s initial Report and Amended Report, the Court finds no reason to upset Judge Fox’s recommendation that the petition be dismissed in its entirety.

Accordingly, this Court adopts the Report and Recommendation as the Order of this Court. The petition for a writ of habeas corpus is hereby DISMISSED.

SO ORDERED.

March 15, 2011



RICHARD OWEN
UNITED STATES DISTRICT JUDGE